

Readopt with amendment Ins 1400, effective 12/28/99 (Document #7185), as amended effective 08/01/01 (Document #7538), to read as follows:

## **CHAPTER 1400 AUTOMOBILE INSURANCE**

Statutory Authority: RSA 400-A:15; RSA 404-C:1; **[RSA 412; RSA 414; RSA 417-A] RSA 412:43; RSA 417-A:9**

### **PART Ins 1400 GENERAL INFORMATION**

**Ins 1400.01 Scope. All insurers authorized to write automobile insurance in this state shall issue to any resident licensed driver or person a policy of automobile insurance covering private passenger automobiles. The policy shall be of the type normally afforded by such insurer to the public, and utilizing the premium payment plans, rules and classification systems then in effect for such insurer, and shall provide the coverages and coverage limits as requested by the insured.**

**Ins 1400.02 Purpose. The purpose of this chapter is to:**

**(a) Establish rules and guidelines in order to ensure that automobile insurance is readily available to citizens of the state of New Hampshire at rates and premiums which are adequate, reasonable and not unfairly discriminatory;**

**(b) Provide a plan of operation for the New Hampshire Automobile Reinsurance Facility.**

### **PART Ins 1401 THE WRITING OF [, CANCELLATION OF, OR REFUSAL TO RENEW POLICIES OF] AUTOMOBILE INSURANCE IN THE VOLUNTARY MARKET**

**Ins 1401.01 Purpose. This part establishes the rules and guidelines that foster a competitive and dynamic private passenger automobile insurance market with products readily available to citizens of the state of New Hampshire at rates and premiums which are adequate, reasonable and not unfairly discriminatory.**

**Ins 1401. [01] 02 Definitions Applicable to the Voluntary Market .**

**[(a) "Accident" means occurrence when a policy coverage provision is based upon use of the word occurrence.**

**(b) "Act" means the provisions of RSA 417-A.]**

**[(c)] (a) "Automobile insurance" means direct insurance against **bodily** injury or **property** damage, including the legal liability **[therefor]** arising out of the ownership, operation, maintenance or use of motor vehicles. The term includes but**

is not limited to, medical payments insurance, physical damage insurance and uninsured motorists insurance.

**[(d) "Car year" means one vehicle insured for one 12 month period.**

**(e) "Chargeable accident" means an at-fault accident loss that results in bodily injury in excess of \$750.00 or property damage in excess of \$1,500.00.**

**(f) "Commission allowance" means actual commissions paid to agents or other expenses incurred in lieu of agents' commission.]**

**[(g)] (b) "Commissioner" means the commissioner of insurance.**

**[(h) "Continuation premium" means the premium that shall be periodically paid to maintain in-force a policy that is written on a continuous basis.**

**(i) "Continuous basis" means a policy written on a condition indicating that such policy will be continued, renewed or considered in-force if the required premium is paid to or received by the insurer on or before a specified date or, a policy written on a continuous-until-cancelled basis.**

**(j) "Continuous-until-cancelled" means a policy issued with no fixed expiration date that remains in-force until cancelled.**

**(k) "Designated carrier" means a member who volunteers and who agrees to accept a designated producer as its agent to provide coverage of automobile insurance for eligible risks in accordance with facility requirements and the member's normal binding procedures.**

**(l) "Designated producer" means an agent, broker or other person who is a licensed fire or casualty agent or broker which is not authorized by any member to write automobile insurance for eligible risks in accordance with facility requirements and has been appointed by the commissioner pursuant to RSA 404-C:9 to a designated carrier for the purpose of providing immediate insurance to such risks.**

**(m) "Eligible risk" means a person whose principal place of residence is New Hampshire and who owns a private passenger automobile registered or principally garaged in this state or who has or is eligible to obtain a valid New Hampshire driver's license, or the state of New Hampshire and its agencies and cities, counties, towns and municipal corporations.]**

**[(n)] (c) "Experience period" means the time period of 3 years immediately preceding the effective date of the policy [and the 2 years immediately preceding the effective date of the policy for speeding convictions] .**

**[(o) "Facility" means the New Hampshire automobile reinsurance facility.**

(p) "Facility gross premium" means gross base premium less dividends paid to policyholders.

(q) "Fleet" means 5 or more motor vehicles of any type.

(r) "Gross base premium" means premium charged the insured before the application of any SDIP surcharge.]

(d) "Insurer" means a licensed company authorized to transact automobile insurance in the state of New Hampshire. Each member of a group of affiliated insurers shall not be considered a separate insurer for purposes of this rule.

(e) "Licensed Driver" means any person with an authorized driver's license or any other license or permit to drive a vehicle issued under the laws of this state, including any temporary or learner's permit.

[(s) "Member" means an insurer subscribing to the New Hampshire automobile reinsurance facility plan of operation.

(t) "Motor home" means a self-propelled motor vehicle with a living area that is an integral part of the vehicle chassis, or a pickup with a permanently attached camper body in which the living area or camper body consists of facilities for cooking and sleeping.]

[(u)] **(f)** "Motor vehicle" means:

(1) A private passenger or station wagon type that is owned or leased for a contract period of at least 6 months and is not used as a public or livery conveyance for passengers, nor rented to others without a driver;

(2) A pick-up body, a delivery sedan, a panel truck, or similar type vehicle owned by any individual or by 2 or more individuals who are residents of the same household, not customarily used in the occupation, profession, or business of the insured other than farming;

(3) A private passenger automobile;

(4) Motorcycle, motorbike, motorscooter, or similar 2-wheel or 3-wheel vehicle;

(5) Recreational vehicles which are subject to registration under RSA 215-A

(6) Motorhomes , meaning a self-propelled motor vehicle with a living area that is an integral part of the vehicle chassis, or a pickup with a permanently attached camper body in which the living area or camper body consists of facilities for cooking and sleeping. [;or

**(7) Trailers designed for use with a private passenger automobile and registered in this state for other than commercial or business use.**

**(v) "New Hampshire automobile reinsurance facility" means the mandatory risk sharing plan established pursuant to RSA 404-C:1, to provide a market mechanism for personal automobile insurance for eligible risks.]**

**[(w)] (g) "Nonstandard market" means that segment of the voluntary market that because of a higher degree of risk or unique coverage requirements requires alternative coverage or pricing options. It also is comprised of risks that are eligible for assignment to the New Hampshire reinsurance facility [ a specific coverage or class of business not readily available in the voluntary market].**

**[(x)] (h) "Person" means any natural person, spouse, and/or family member or any person with permissive use of a motor vehicle [ firm, co-partnership, association, corporation, government or agency thereof].**

**[(y)] (i) "Policy of automobile insurance" means a policy delivered or issued for delivery in this state insuring a person as named insured or one or more related individuals resident of the same household, and under which the insured vehicles therein designated includes a private passenger automobile.**

**[(z)] (j) "Policy period", means that period of time set forth in the policy itself during which the policy is to remain in effect or if the policy contains no fixed expiration date, or if the policy provides for a policy period of less than 12 months in duration, policy period shall mean 12 months.**

**[(aa) "Private passenger automobile" means a motor vehicle as defined in (u) above.]**

**(k) "Rate" means that cost of insurance per exposure unit whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premiums.**

**(l) "Rating plan" means any system by which insurers establish, directly or indirectly, a premium or rate to be charged an individual for the insurance coverage they desire.**

**[(ab)] (m) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer and having the types and limits of coverage at least equal to those contained in the policy being superseded.**

**[(ac)] (n)** "Replacement policy" means a policy that a company issues to replace a voluntary policy for the purpose of ceding the insured to the facility or moving the insured to a higher rated company or tier.

**[(ad)] (o)** "Resident" means **[: (1) A] a** person who maintains his or her true, fixed and permanent residence within the state of New Hampshire **[,] and** does not claim a residence in any other state for any purpose **[and who has, through all of his or her actions, demonstrated a current intent to designate that the permanent residence is his or her principal place of physical presence for the indefinite future to the exclusion of all others; or] .**

**[(2) A person who has previously met the conditions of (1) above and who now maintains a permanent place of residence in New Hampshire for the entire year and has actually spent more than 183 days in New Hampshire during the previous calendar year.]**

**[ (ae) "Safe Driver Incentive Plan (SDIP)" means the mandatory rating plan used with all policies ceded to the facility to develop the surcharge portion of the total policy premium.]**

**(p) "Supplementary rate information" means any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule and any other similar information needed to determine an applicable rate in effect or to be in effect.**

**(q) "Supporting information" means:**

**(1) The experience and judgment of the filer and the experience or data of other insurers or organizations relied upon by the filer;**

**(2) The interpretation of any statistical data relied upon by the filer;**

**(3) A description of methods used in making the rates; and**

**(4) Other similar information relied upon by the filer.**

**[(af)] (r)** "Tier" means a level or division of a company's rating system that will yield a separate and distinct rate for automobile insurance.

**(s) "Underwriting Guidelines" mean:**

**(1) Any mechanism developed as an aid in the selection, placement or tiering of private passenger automobile risks.**

**(2) The portion of the rate classification system submitted to the Commissioner pursuant to RSA 412: 16.**

**[(ag) "Total policy premium" means the sum of all premiums for all liability and physical damage coverages.]**

**[Ins 1401.02 Cancellation; Refusal to Write; Refusal to Renew; Insufficient Grounds.**

- (a) An insurer shall not place a new business applicant into a nonstandard market or assigned risk plan solely because of any of the factors cited in RSA 417-A:3 and RSA 417:4 VIII (e).
- (b) No agent, broker or other producer shall be penalized in any way by an insurer for submitting applications for a policy of automobile insurance to such insurer. A pattern of agency terminations by an insurer shall be deemed evidence of an intent by an insurer to accomplish indirectly what RSA 417-A:3 prevents such insurer from doing directly.
- (c) Every insurer shall make available to any applicant for insurance, for purposes of demonstrating financial responsibility, coverage and limits up to the facility maximum limits then currently available in Ins 1404.10. Refusal by an applicant of coverage and limits then currently available in the facility shall not be deemed a refusal to write for purposes of the act.
- (d) No insurer shall refuse to write, for any applicant or insured, collision and comprehensive limits and coverage except as allowed within underwriting guidelines filed with the department. A refusal by any insurer to write collision and comprehensive coverage as requested by the applicant or insured but then offering to write a different collision or comprehensive coverage shall be deemed a refusal to write insurance coverage.
- (e) The notice required for movement of a replacement policy from one company to another within a group of affiliated companies, the movement of a policy to a different tier within one company, or cession to the facility shall include the terms and premium for coverage with the new company or tier.
- (f) Insurers shall establish a system or procedure which shows the retiering of an automobile policy between rating tiers. A cancellation or nonrenewal with concurrent writing of another policy is retiering for purposes of this rule. Each insurer shall track the retiering of an automobile policy for a minimum of 3 years from the effective date of the current inforce policy.
- (g) Any refusal to write, refusal to renew, or cancellation of a policy of automobile insurance by an insurer solely because of the number of years of driving experience or a lack of driving experience of the applicant or insured shall be deemed by the department to violate RSA 412:18 (a) or RSA 417:4 VIII (e). As most inexperienced operators are youthful operators, to this extent, inexperience shall be considered by the department to be a direct reflection of one's age. Accordingly, no insurer shall cancel, refuse to write or refuse to renew a policy of automobile insurance on any person, regardless of years of driving experience solely because of such person's age.

**Ins 1401.03 Coercion by Insurer.** No insurer shall refuse to write or renew a policy of automobile insurance previously issued to an individual solely because such individual has no other policy of insurance with said insurer.

**Ins 1401.04 Cancellation Grounds.**

(a) Insurers shall not claim that suspension or revocation of an insured's driving privileges are grounds for asserting that the insured's coverage has been forfeited under the provisions of RSA 259:61, when the suspension or revocation can be directly attributed to the insurer's failure to file the necessary certification of insurance, such certification to comply with provisions of RSA 264.

(b) The insurer shall protect the driving privileges of its insureds to be licensed to operate a motor vehicle in the State of New Hampshire. Therefore, insurers shall not claim that suspension or revocation of a named insured's driving privileges are grounds for cancellation under RSA 417-A:4-I(b), when the suspension or revocation may be directly attributed to the insurer's failure to file the necessary certification of insurance, such certification to comply with provisions of RSA 264.

with the specific reason for the cancellation or nonrenewal. Cancellation reasons such as "for underwriting reasons" or "does not meet underwriting requirements" shall not be sufficient for compliance.

**Ins 1401.05 Movement of a Policy.**

(a) A member of a group of affiliated companies may refuse to write, cancel or refuse to renew a particular policy due to underwriting concerns, provided the member immediately offers to arrange insurance for the applicant or insured with another member of the same group.

(b) The movement of a policy from one company to another within a group of affiliated companies or, the movement of a policy to a different tier within one company resulting in a different rate for the insured shall only occur on the renewal date of the policy and shall require a 45-day written notice of such action to the policyholder. The notice shall contain the terms and premiums for coverage.

(c) No company shall move a policy to a different tier within one company resulting in a different rate for the insured unless it does so in accordance with its underwriting guidelines filed with the commissioner. Such underwriting guidelines shall consist of objective underwriting criteria. Criteria shall be applied to the insured in a non-subjective manner so that application of the criteria alone determines and results in the selection of one and only one tier.

**Ins 1401.06 Notice of Cancellation; Refusal to Renew Notice.**

(a) Any applicant for a policy who is refused such policy by an insurer may in writing within 10 days of notice of such refusal request the insurer to supply the reasons for such refusal. The insurer shall supply such reasons within 5 days of receipt of such request, and shall also advise that the applicant may request in writing that the insurance commissioner review the action of the insurer in refusing to write a policy for the applicant.

(b) Reasons provided by the insurer for refusal to write, refusal to renew and cancellation actions shall be outlined in detail. Such reasons as "does not meet underwriting requirements", "multiple losses" or "multiple convictions" shall not be considered sufficiently specific. In cases involving either multiple losses or multiple convictions, insurers shall specify such details as dates of loss or convictions, parties involved, and amounts paid, if any, when communicating reasons to the insured or to the insurance department. If an applicant or insured does not meet "underwriting requirements", the insurer shall specify in detail all areas in which such applicant or insured is deficient with respect to such underwriting requirements.

(c) A 45-day notice of cancellation shall be provided where a policy has either been in effect for 60 days or is a renewal and is being cancelled during its term for reasons other than nonpayment of premium.

**Ins 1401.07 Notice of Nonrenewal Not Required.** A notice of nonrenewal for nonpayment of premium on a policy written on other than a continuous basis shall not be required if the insurer has manifested in writing its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal or has manifested such intention in writing by other means. Where a policy is written on a continuous basis, a written notice of cancellation providing at least 10 days additional coverage shall be provided to the insured in the event of nonpayment of the "continuation premium." An insurer may include an offer to reinstate along with such notice of cancellation if desired.

**Ins 1401.08 Review Request; Reasons for Refusal.** Written requests for review in whatever form will be accepted and processed by the department.

**Ins 1401.09 Review Procedure; Termination of Policy.**

(a) The department shall conduct its own independent review upon receipt of a request for a review pursuant to RSA 417-A:8.

(b) Pursuant to the act, a policy shall remain in force until the date referred to in RSA 417-A:5 or the conclusion of the commissioner's review, whichever is later, whether or not the later date falls beyond the period for which the insured has paid a premium, except for instances of appeals from cancellations due to nonpayment of premium, in which case the policy shall terminate as of the date provided in the notice under RSA 417-A:5 II, unless the appeal is upheld or the policy reinstated.



(c) Insurers, pursuant to RSA 417-A:8 shall in all instances supply to the commissioner the reasons for cancellation, nonrenewal or refusal to write insurance coverages.

(d) Each insurer may file with the insurance commissioner the names of its representatives who are to be notified in the event that the insured or an applicant requests the commissioner to review a cancellation, refusal to renew, or refusal to write involving that insurer.

**Ins 1401.10 Records.** Insurers shall maintain for a period of 6 years a record retrieval system of all company refusals to write insurance coverage and all company initiated cancellations and non-renewals of insurance policies and the factual reasons for the refusal to write, cancel or non-renew.]

**Ins 1401.03 Voluntary Market Refusal to Write; Refusal to Renew; Cancellation.**

(a) Insurers shall make the same coverage and limits available to each applicant or insured, regardless of tier or company placement, up to the maximum coverage options available in the facility shown under Ins 1404.10 (a). If the insurer's maximum available underlying limits, or reinsurance contracts, preclude it from offering such coverage and limit options, the department will find this acceptable.

(b) Insurers shall not claim that suspension or revocation of an insured's driving privileges are grounds for asserting that coverage has been forfeited under the provisions of RSA 264:3 or cancelled under RSA 417-A:4, when the suspension or revocation can be directly attributed to the insurer's failure to file the necessary certification in compliance with RSA 264.

(c) Insurers shall establish and maintain a system by which each automobile cancellation, other than for nonpayment of premium, and each nonrenewal, other than at the insured's request, is recorded together with the specific reason for the cancellation or nonrenewal. Cancellation reasons such as "for underwriting reasons" or "does not meet underwriting requirements" are lacking in specificity and shall not be sufficient reasons for compliance.

(d) Insurers shall not penalize producers in any way for submitting applications for a policy of automobile insurance to such insurer. A pattern of agency terminations by an insurer shall be deemed evidence of an intent by an insurer to circumvent RSA 417-A:3.

**Ins 1401.04 Movement/Placement of a Policy in the Voluntary Market.**

(a) A new business applicant shall not be placed into a program or tier solely because of any of the factors cited in RSA 417-A:3 and RSA 417:4, VIII(e).

(b) No company shall move a policy to a different tier within one company, or from one company to another within a group, which results in a different rate for the insured unless it does so in accordance with its underwriting guidelines filed with the commissioner. Such underwriting guidelines shall consist of objective underwriting criteria. Criteria shall be applied to the insured in a non-subjective manner so that application of the criteria alone determines and results in the selection of only one tier.

(c) A member of a group of affiliated companies may refuse to write, cancel or refuse to renew a particular policy consistent with filed underwriting guidelines, provided the member immediately offers to arrange insurance for the applicant or insured with another member of the same group.

(d) The movement of a policy from one company to another within a group of affiliated companies, or the movement of a policy to a different tier within one company, resulting in a different rate for the insured, shall only occur on the renewal date of the policy and shall require a 45-day written notice of such action to the policyholder.

(e) The following shall not be used or considered in any rating plan or set of underwriting criteria:

(1) The following occurrences or instances:

a. Where the automobile was lawfully parked; an automobile rolling from a parked position shall be considered unlawfully parked under the operation of the last operator;

b. Where the applicant or other operator residing in the same household, or owner, was reimbursed by, or on behalf of, a person responsible for the accident, or has a judgment against such person.

c. Where the automobile of an applicant or other operator resident in the same household, was struck in rear by another vehicle, and the applicant or other resident operator has not been convicted of a moving traffic violation connected therewith;

d. Where the operator of the other automobile involved in the accident was convicted of a moving traffic violation and the applicant or other resident in the same household was not convicted of a moving traffic violation in connection therewith;

e. Where the automobile operated by applicant or other operator resident in the same household is damaged as a result of contact with a "hit and run" driver, and the applicant or other operator so reports the accident to the property authority within 24 hours;

f. Accidents involving damage by contact with animals;

g. Accidents involving physical damage, limited to and caused by flying gravel, missiles, or falling objects;

h. Accidents occurring as a result of the operation of an automobile in response to an emergency if the operator at the time of the accident was responding to a call to duty as a paid or volunteer member of any police or fire department, first aid squad or of any law enforcement agency, but not an accident occurring after the emergency situation ceases or after the private passenger automobile ceases to be used in response to such emergency;

(2) Lack of prior insurance in the following instances:

a. Applicants who were previously listed on a family member's policy;

b. Applicants who are newly licensed operators;

c. Applicants who have had, within the past 30 days, use of an insured company vehicle; or

d. Applicants who are returning military personnel;

(3) A requirement of continuous employment; or

(4) Occupation of the applicant or insured.

#### **[PART Ins 1402 AUTOMOBILE LIABILITY INSURANCE**

**Ins 1402.01 Physical Examinations.** Pursuant to RSA 412:2-b when an insurer requires any person to submit to a physical examination as a prerequisite to insurance or delivery of any motor vehicle liability policy, the insurer shall assume and pay the cost of the physical examination.

**Ins 1402.02 Cancellation Because of Age; Prohibited.** Pursuant to RSA 412:18-b, the provisions of RSA 412:18-a shall not apply to youthful classified operators. Nor shall increases or decreases of premiums for such policies for any particular age group be applied unless a statewide classification system has been approved and adopted by the insurance commissioner for such drivers. However, the provisions of RSA 417 and RSA 417-A shall apply to youthful classified drivers.]

#### **PART Ins 1402 VOLUNTARY MARKET REGULATION PERTAINING TO RATES, RATING PLANS AND PRACTICES**

**Ins 1402.01 Rating and Rating Plans.**

(a) Insurers shall establish a system of base rates, risk classifications and accompanying factors, other modifications and factors which may reflect individual characteristics of the insured and coverage choices, and underwriting or tiering rules by which individuals are placed in affiliated companies, marketing tiers, or programs.

(b) The entire rating plan and accompanying rates and factors shall be justified actuarially and filed with the commissioner. If the insurer is relying upon a credit report or insurance scoring system or model as defined in Ins 3300 to underwrite or rate any applicant or person inquiring about insurance, or re-underwrite or re-rate any existing class or subclass of insureds, the insurer shall, before its use on any consumer risk file the credit scoring system with the commissioner pursuant to all rules and guidelines stated in Ins 3300.

(c) A rating plan shall consist of any or all of the following:

(1) Schedules of base rates and rates and/or factors for optional coverage choices;

(2) Risk classification system and accompanying factors, relativities or charges;

(3) Modification factors, discounts or surcharges, reflective of individual risk experience or behavior;

(4) Pricing algorithms or rating steps used to establish final premium;

(5) Underwriting guidelines to the extent that they differentiate risks with the result being different rates or premiums charged to one insured compared to another;

(6) Credit scoring mechanisms and scoring models relied upon in underwriting, risk classification, or rating;

(7) Standards applied to insureds governing placement in affiliated companies within a group or tiers within a single company, resulting in different rates or premiums being charged, one insured versus another.

#### Ins 1402.02 Rating Practices.

(a) Insurance companies shall not make premium changes to an automobile policy during the policy period in the voluntary market other than for the following reasons:

(1) Addition of a new or replacement vehicle;

(2) Addition or deletion of a driver;

(3) Change in garaged location;

(4) Change in coverage;

(5) Change in limits;

(6) Change in use of vehicle;

(7) The insured has attained a new age;

(8) Charges as a result of convictions or occurrences resulting in losses incurred or paid which occur during the current or first prior policy period; however, charges may not reflect a recoupment of uncollected premium from the prior policy period;

(9) The addition of new coverage to a vehicle on the policy or for a replacement vehicle; or

(10) Deletion of a vehicle.

\_\_\_\_\_ (b) Changes which occur during the policy period shall be calculated using the rates in effect at the beginning of the policy period.

\_\_\_\_\_ (c) If premium changes are made during the policy period to reflect charges pursuant to (a)(8) above they shall also be appropriately removed on the same basis during a subsequent policy period.

\_\_\_\_\_ Ins 1402.03 Reflecting Driver Performance.

\_\_\_\_\_ (a) Rating systems or rating plans used by insurers shall include means by which insureds are "credited" with good driving experience and "surcharged" to reflect certain loss and violation history.

\_\_\_\_\_ (b) Every insurer shall clearly indicate on the renewal notice and declaration page of each policy delivered on or after January 1, 2004, the following:

\_\_\_\_\_ (1) The portion of the total premium, stated in dollars, which reflects loss or violation free experience of the insured and other drivers on the policy;

\_\_\_\_\_ (2) The number of years the insured has received credits or discounts for having good driving experience.

\_\_\_\_\_ (3) The portion of the total premium, stated in dollars, which reflects loss or violation history of the insured and all drivers on the policy;

\_\_\_\_\_ (4) A listing with sufficient detail showing occurrences and violations which have impacted the premium charged.

**(c) For the purposes of this rule, surcharges include premium amounts included by means of a factor to an otherwise applicable premium, a removal of credits, tiering or retiering, or by placement.**

**(d) Insurers shall clearly identify within their filed rating plans and guidelines, specifics with respect to the types of violations and occurrences which impact an insured's premium and the means by which this is accomplished – by rating rule, underwriting criteria, or both.**

**[PART Ins 1403 REGULATION PERTAINING TO RATES, RATING PLANS  
CLASSIFICATION, AND COVERAGES FOR AUTOMOBILE INSURANCE**

**Ins 1403.01 Rating Information.**

**(a) Insurance companies shall not make mid-term premium changes to an automobile policy other than for the following reasons:**

- (1) Addition of a new or replacement vehicle;**
- (2) Addition or deletion of a driver;**
- (3) Change in address;**
- (4) Change in coverage;**
- (5) Change in limits;**
- (6) Change in use of vehicle.**

**(b) Changes which occur during the policy period shall be calculated using the rates in effect at the beginning of the policy period except for:**

**(1) The addition of a new vehicle to the policy which is not a replacement vehicle to a vehicle already on the policy; and**

**(2) The addition of new coverage to a vehicle on the policy or for a replacement vehicle. New coverage shall not include an increase in coverage limits already existing on the policy.**

**(c) The following changes shall not result in any mid-term change to an existing policy:**

- (1) The insured has attained a new age; or**
- (2) SDIP charges as a result of accidents or convictions during the policy period.**

**(d) Companies writing insurance in this state shall maintain all underwriting and rating documentation from which any premium charge is**

developed. Such documentation shall in all cases include the underlying factual basis which supports the premium charge developed, not merely the underwriting or rating conclusion drawn from such facts. Such documentation shall be preserved in any auditable medium, such as but not limited to physical, fiche or electronic preservation of written communication or sound recording, written transcription or notes of verbal communication. Such documentation shall be retained 6 years from the date of generation.

**Ins 1403.02 Safe Driver Credits.**

(a) Insurers shall provide a discount to insureds based on the SDIP point criteria given in Ins 1404.13 according to the following schedule:

- (1) A 5 percent discount for one SDIP point free year;
- (2) A 10 percent discount for 2 SDIP point free years;
- (3) A 15 percent discount for 3 SDIP point free years; and
- (4) A 20 percent discount for 4 SDIP point free years.

(b) Any merit rating plan shall be filed by an insurer and shall conform to the SDIP as given in Ins 1404.13. However, insurers may provide discounts greater than those detailed in the schedule set out in (a) above, if such discounts are filed with the department and the policy is not ceded to the facility.

(c) The discount provided shall be applied to the bodily injury, property damage, medical payments, comprehensive and collision portion of the premium.

(d) Every insurer shall indicate on the renewal notice and declaration sheet of each policy delivered on or after April 1, 1992 the number of years the insured has received safe driver credits.

**Ins 1403.03 Reinsurance Facility Rates.** The facility rates shall be developed utilizing data generated by the facility. Approval shall be based on the same standards and criteria the commissioner utilizes in the approval of rates for the voluntary market as detailed in RSA 412:15.]

**PART Ins 1403 RECORD RETENTION PROCEDURES**

**Ins 1403.01 Record Retention Procedures.**

**(a) Insurers shall establish a system or procedure which shows the retiering of an automobile policy between rating tiers. A cancellation or nonrenewal with concurrent writing of another policy is retiering for purposes of this rule. Each insurer shall track the retiering of an automobile**

policy for a minimum of 6 years from the effective date of the current inforce policy.

(b) Insurers shall maintain for a period of 6 years a record retrieval system of all company refusals to write insurance coverage and all company initiated cancellations and non-renewals of insurance policies and the factual reasons for the refusal to write, cancel or non-renew.

(c) Companies writing insurance in this state shall maintain all underwriting and rating documentation from which any premium charge is developed. Such documentation shall in all cases include the underlying factual basis which supports the premium charge developed, not merely the underwriting or rating conclusion drawn from such facts. It may be created and stored in the form of paper, photograph, magnetic, mechanical or electronic medium, or any process that accurately forms a durable reproduction of the record, so long as the record is capable of duplication to a hard copy that is as legible as the original document. Documentation shall be maintained for each policy issued, and shall be maintained for the duration of the current policy term plus 5 years.

#### PART Ins 1404 PLAN OF OPERATION FOR THE NEW HAMPSHIRE AUTOMOBILE REINSURANCE FACILITY

Ins 1404.01 Purpose. The purposes of this part shall be:

(a) To make automobile insurance readily available to citizens of the state of New Hampshire at rates and premiums which are adequate, reasonable and non-discriminatory by approving and promulgating the plan of operation for the New Hampshire automobile reinsurance facility plan, hereinafter "facility"; and

(b) To specify the basis of participation of insurers and agents therein and the conditions under which eligible risks which are equitably entitled but otherwise unable to obtain automobile insurance covering private passenger automobiles shall be accepted by such insurers and **[agents] producers**.

#### Ins 1404.02 Definitions.

(a) "Automobile insurance" means direct insurance against bodily injury or property damage, including the legal liability, arising out of the ownership, operation, maintenance or use of motor vehicles. The term includes but is not limited to, medical payments insurance, physical damage insurance and uninsured motorists insurance.

(b) "Car year" means one vehicle insured for one 12 month period.

(c) "Chargeable accident" means, for purposes of placement to the New Hampshire reinsurance facility, an at-fault occurrence that results in bodily injury in excess of \$750.00, death or property damage in excess of \$1,500.00, pursuant to RSA 412:3 I.



(d) "Commission allowance" means actual commissions paid to producers or other expenses incurred in lieu of producers' commission.

(e) "Commissioner" means the commissioner of insurance.

(f) "Continuation premium" means the premium that shall be periodically paid to maintain in-force a policy that is written on a continuous basis.

(g) "Continuous basis" means a policy written on a condition indicating that such policy will be continued, renewed or considered in-force if the required premium is paid to or received by the insurer on or before a specified date or, a policy written on a continuous-until-cancelled basis.

(h) "Continuous-until-cancelled" means a policy issued with no fixed expiration date that remains in-force until cancelled.

(i) "Eligible risk" means a person who has signed a residency statement pursuant to RSA 417-A:3-b and who has at least one safe driver incentive plan (SDIP) point.

(j) "Experience period" means the 3 years immediately preceding the effective date of the policy and the 2 years immediately preceding the effective date of the policy for speeding convictions.

(k) "Facility" means the New Hampshire automobile reinsurance facility.

(l) "Facility gross premium" means gross base premium.

(m) "Fleet" means 5 or more motor vehicles of any type.

(n) "Gross base premium" means premium charged the insured before the application of any SDIP surcharge.

(o) "Licensed Driver" means any person with an authorized driver's license or any other license or permit to drive a vehicle issued under the laws of this state, including any temporary or learner's permit

(p) "Member" means an insurer authorized to write automobile insurance in the state of New Hampshire.

(q) "Motor vehicle" means:

(1) A private passenger or station wagon type that is owned or leased for a contract period of at least 6 months and is not used as a public or livery conveyance for passengers, nor rented to others without a driver;

(2) A pick-up body, a delivery sedan, a panel truck, or similar type vehicle owned by any individual or by 2 or more individuals who

are residents of the same household, not customarily used in the occupation, profession, or business of the insured other than farming;

(3) A private passenger automobile;

(4) Motorcycle, motorbike, motorscooter, or similar 2-wheel or 3-wheel vehicle;

(5) Recreational vehicles which are subject to registration under RSA 215-A;

(6) Motorhomes , meaning a self-propelled motor vehicle with a living area that is an integral part of the vehicle chassis, or a pickup with a permanently attached camper body in which the living area or camper body consists of facilities for cooking and sleeping.

(r) "New Hampshire automobile reinsurance facility" means the mandatory risk sharing plan established pursuant to RSA 404-C:1, to provide a market mechanism for personal automobile insurance for eligible risks.

(s) "Person" means any natural person, spouse, and/or family member or any person with permissive use of a motor vehicle.

(t) "Policy of automobile insurance" means a policy delivered or issued for delivery in this state insuring a person as named insured or one or more related individuals resident of the same household, and under which the insured vehicles therein designated includes a private passenger automobile.

(u) "Policy period", means that period of time set forth in the policy itself during which the policy is to remain in effect or if the policy contains no fixed expiration date, or if the policy provides for a policy period of less than 12 months in duration, policy period shall mean 12 months.

(v) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy superceding at the end of the policy period a policy previously issued and delivered by the same insurer and having the types and limits of coverage at least equal to those contained in the policy being superseded.

(w) "Replacement policy" means a policy that a company issues to replace a voluntary policy for the purpose of ceding the insured to the facility.

(x) "Resident" means:

(1) A person who maintains his or her true, fixed and permanent residence within the state of New Hampshire, does not claim a residence in any other state for any purpose and who has, through all of his or her actions, demonstrated a current intent to designate that

**the permanent residence is his or her principal place of physical presence for the indefinite future to the exclusion of all others; or**

**(2) A person who has previously met the conditions of (1) above and who now maintains a permanent place of residence in New Hampshire for the entire year and has actually spent more than 183 days in New Hampshire during the previous calendar year.**

**(y) "Safe Driver Incentive Plan (SDIP)" means the surcharge rating plan used with all policies to develop the surcharge portion of the total policy premium.**

**(z) "Total policy premium" means the sum of all premiums for all liability and physical damage coverages.**

Ins 1404. **[02] 03 [Persons] Insurers** Required to Participate. All insurers authorized to write automobile insurance in this state and all **[agents] producers** licensed to represent such insurers for automobile insurance in this state shall participate in the facility.

Ins 1404. **[03] 04** Basis of Participation.

(a) All insurers authorized to write automobile insurance in this state shall issue to any eligible risk a policy of automobile insurance covering private passenger automobiles. The policy shall be of the type normally afforded by such insurer to the public, and utilizing the premium payment plans, rules and classification systems then in effect for such insurer, and shall provide the coverages and coverage limits as requested by the insured. However, any policy ceded to the facility shall be charged the approved facility rate and no insurer shall be required to afford coverages or coverage limits in excess of those coverages and coverage limits offered by the facility. Each member of a group of affiliated insurers shall not be considered a separate insurer for purposes of this section.

(b) No **[agent licensed] producer appointed** to represent an insurer shall refuse to furnish to any eligible risk a quotation of premium for automobile insurance covering private passenger automobiles.

(c) If the risk accepts the quotation, the **[agent] producer** shall promptly submit the application to the insurer, and shall exercise whatever binding authority is normally available to him from that insurer.

(d) If the risk accepts the quotation but it is not within the **[agent's] producer's** binding authority, the **[agent] producer** shall promptly submit the application to the insurer and unless a later effective date is requested by the insured, the coverage shall be bound and effective at 12:01 A.M. on the date following the date of mailing of the application to the insurer as shown by the postmark on the transmittal envelope. If the postmark is not legible, the coverage will be effective at 12:01 A.M. on the day following receipt of the application by the insurer.

Ins 1404. **[04] 05** Service.

(a) Every participating insurer and **[agent] producer** shall provide to any eligible risk seeking automobile insurance covering private passenger automobiles the same level of service regardless of whether the person is or becomes a risk which is ceded to the facility.

(b) The insurer shall protect the driving privileges of its insureds to be licensed to operate a motor vehicle in the State of New Hampshire. Therefore, upon notice to the insurer that it has become necessary for an insured to file evidence of financial responsibility with the state of New Hampshire, such filing shall be made by the insurer or **[agent] producer** covering the risk as soon as the insurer or **[agent] producer** becomes aware of the requirement.

(c) When an eligible risk requests a filing of financial responsibility, the insurer shall make such filing immediately upon request.

**[Ins 1404.05 Agency-Company Relationships. No agent, broker or other producer shall be penalized in any way by an insurer for submitting an application for a policy of private passenger automobile insurance through any of the producer's licensed companies.]**

Ins 1404.06 Obligation of Members.

(a) Every member shall be bound by the plan of operation of the facility.

(b) Any member whose membership in the facility terminates, nevertheless shall continue to be bound by the plan of operation of the facility with respect to its obligations incurred during its membership.

(c) Any unsatisfied net liability to the facility of any insolvent member shall be assumed by and apportioned among the remaining members in the facility in the manner provided in Ins 1404. **[14] 13**. The facility shall have all rights allowed by law on behalf of the remaining members against the estate or funds of such insolvent member for sums due the facility.

(d) When a member has been merged or consolidated into another insurer, or another insurer has reinsured a member's entire New Hampshire automobile insurance business, such member and its successors in interest and such other insurer shall be liable for such member's obligations hereunder.

(e) To ensure the efficient and equitable operation of the facility, the individual members shall not be held liable for any judgment against the facility pursuant to the provisions of RSA 404-C:2 III.

Ins 1404.07 Board of Governors.

(a) The commissioner shall appoint a board of governors, hereinafter referred to as the "board," composed of 12 representatives and nominated as follows:

(1) The American Insurance Association shall nominate 2 members;

- (2) The Alliance of American Insurers shall nominate 2 members;
  - (3) The National Association of Independent Insurers shall nominate 2 members;
  - (4) Insurers which are not members of the organizations enumerated in (1), (2) and (3) above shall nominate 2 members;
  - (5) The commissioner shall select one consumer not a member of any of the organizations enumerated in subparagraphs (1) through (4) above;
  - (6) The commissioner shall select one member who is an employee for the insurance department; and
  - (7) The commissioner shall select 2 licensed New Hampshire insurance **[agents] producers**.
- (b) Not more than one member in a group of companies under common management or control shall be represented on the board at the same time.
- (c) The names of the nominees as selected in accordance with (a) above shall be placed in nomination before the commissioner prior to the completion of the terms of the **[current representatives the nominee(s) is to succeed] appointees that the nominees are replacing**.
- (d) Each board representative shall serve for a term of 2 years but may serve succeeding terms if subsequently designated to serve the additional term in the manner provided herein for the initial designation.
- (e) All board representatives shall serve until their successors are designated. Any vacancy on the board, by resignation of a representative or otherwise, shall be filled in the manner provided herein for initial designation, but the designee shall serve only for the unexpired portion of the term for which the representative is designated, unless such representative is subsequently appropriately designated to serve an additional term or terms.
- (f) Actions of the board shall be binding when voted by a majority of those eligible to vote who are present and voting, and no vote may be taken unless 7 representatives on the board who are eligible to vote on the matter are present. The consumer and insurance department representatives on the board shall be eligible to vote on all matters not directly involving the facility's budget or personnel administration.
- (g) All board meetings shall be open to members, producers, the commissioner or a person designated by **[him] the commissioner**, and to the public except upon majority vote of the board when permitted or required by law.
- (h) The board shall recommend to the commissioner:

- (1) A day-to-day plan of operation to carry out the intent and purpose of the facility;
- (2) Appointment or employment of such staff as is necessary to carry out the business of the facility;
- (3) Contracts as necessary to provide space, equipment and services for the facility's purposes;
- (4) Appointment of standing or temporary committees from among members and producers;
- (5) Assessments as necessary for the operating expenses of the facility;
- (6) Apportionment of the underwriting results among the members and to levy assessments or make such distributions as are appropriate for such apportionment;
- (7) Distribution of an annual report and minutes of board meetings to members, and to the commissioner;
- (8) Selection at the annual meeting of a chairman who shall not serve for more than 2 consecutive terms; and
- (9) Recommendation of any other action it deems necessary or appropriate for efficient and effective operation of the facility.

(i) The board of governors or its designees shall periodically review the market for automobile insurance throughout the state of New Hampshire to make certain that eligible risks can readily obtain such insurance. Such review shall include but not be limited to a review of any complaints received from the public and from duly licensed **[fire or casualty insurance]** producers and addressed to the facility or to the commissioner.

**[(j) Any licensed producer who does not have an existing agency relationship with any member for automobile insurance may apply to the board of governors for appointment to a designated carrier. For purposes of this part, a producer shall not be considered to have an existing agency relationship with any member if the producer's agency relationship is with a company that specializes in writing motorcycle insurance and the agency agreement restricts the producer to writing only insurance coverage on motorcycles. The board of governors shall review such application, and if it determines that the producer is duly licensed and does not have an existing agency relationship, the board of governors may appoint the producer to a designated carrier. All members shall respond to any requests for information relevant to such application made by the board in a timely manner.]**

**(k) Any licensed producer having applied for a designated carrier and is aggrieved by any decision of the board of governors may appeal that**

**decision to the commissioner within 15 days. Failure of the board to act finally upon an application for designated status within 15 working days from the time of receipt of said application by the board, shall be deemed a denial of said application for the purpose of taking an appeal to the commissioner. The commissioner shall not be bound by any decision or finding of the board of governors.]**

Ins 1404.08 Meetings.

(a) There shall be an annual meeting of the facility in New Hampshire **[in May, unless the baord shall designate some other date] at a date an time designated by the Board of Governors.**

(b) Special meetings of the facility may be called at any time by the chairman of the board, and special meetings shall be called by the chairman upon the written request of:

- (1) The commissioner;
- (2) Board representatives numbering 6; or
- (3) At least 15 members not under the same management and which write at least 25% of the state private passenger automobile insurance premium.

(c) Notice of all annual and special meetings of the facility shall be given or caused to be given by the chairman in writing mailed to or by a generally accepted electronic medium directed to each member at its latest address appearing upon the records of the facility and to the commissioner. Except where otherwise provided in this plan, if notice is mailed, it shall be placed in the mail not less than 10 days prior to the date of the meeting. If notice is given by a generally accepted electronic medium it shall be given not less than 5 days prior to the meeting.

(d) A quorum at any annual or special meeting of the facility shall consist of one more than half of the members of the facility.

(e) The matters to be considered at any special meeting of the facility shall be only those matters set forth in the notice of such meeting. At annual meetings members may consider and act upon all matters properly brought before them, whether or not contained in the notice thereof.

(f) Each member of the facility shall be entitled to one vote at all meetings of the facility. Except where otherwise provided in this plan, action may be taken at any such meeting by the members present and voting provided such vote represents not less than 70 percent of the total New Hampshire automobile insurance premiums written on a direct basis during the latest reported calendar year.

(g) Members may vote by mail on written propositions and such votes shall have the same standing as if cast by such member in person. Such votes shall be kept on file at the department.

(h) Minutes of all meetings of the facility and of the board shall be sent to all members and to the commissioner. The commissioner shall make copies of the minutes available to the public upon request pursuant to the provisions of RSA 91-A.

Ins 1404.09 Statistical Data. Each member shall furnish or cause to be furnished such statistics in connection with insurance subject to the facility as required by the board, or commissioner, and each member shall authorize its statistical agent to release any such data as requested by the board. Such statistics shall be furnished when requested by the commissioner.

Ins 1404.10 Cessions.

(a) A member shall cede all terms and provisions of any policy of insurance covering private passenger automobiles which is ceded to the facility, **[, up to the limits of coverage and the limit on cession provided in this plan.**

**(b) Private passenger automobile insurance c]** Coverages up to the following limits shall be eligible for cession to the facility:

- (1) Bodily injury liability \$250,000 each person, \$500,000 each accident;
- (2) Property damage liability \$100,000 each accident;
- (3) Single limit bodily injury and property damage liability \$500,000 each accident;
- (4) Medical payments \$10,000 each person;
- (5) Uninsured motorists shall be at least equal to bodily injury liability limits;
- (6) Physical damage, loss of use or damage to automobiles on an actual cash value basis subject to the policy deductible provisions;
- (7) Towing and labor \$25 per disablement; and
- (8) Any other automobile insurance or limits required by law.

**[(c)] (b)** Cessions to the facility with respect to a policy written on business which is new to a member and which is new to the group of insurers under common management or control to which the member belongs shall be as follows:

(1) A policy may be ceded by a member as of the policy effective date provided the policy meets the cession eligibility requirements **[stated in Ins 1404.10 (h)]** and the following criteria:

- a. The notice of cession is received by the facility within 20 days after the policy effective date; or



b. The notice of cession is received by the facility from 21 to 60 days after the policy effective date and either:

1. The company provides documentation to the facility that the policy was ceded as a result of misinformation provided by the insured; or

2. The company provides documentation to the facility that the policy was originally written as a facility policy, at the facility rate, indicating that the company or **[agent] producer** initially intended to cede the policy, otherwise the cession shall be effective on the date the notice of cession is received by the facility;

(2) No loss incurred within the 60 day retroactive period shall be covered by the facility unless the member provides reliable information to the board that the policy was ceded as a result of misinformation provided by the insured not merely because of the loss;

(3) With respect to a policy written on business which is new to a member and which is new to the group of insurers under common management or control to which the member belongs, if any, the premium for such a policy ceded or moved to a different company or tier subsequent to the policy effective date shall be the facility premium or new company or tier premium retroactive to the policy effective date;

(4) Notwithstanding (2) above, if the insured elects not to accept the offer made in the notification of change as required by Ins 1404.10 **[(i)] (h)** any earned premium charged to the insured shall be at the originally quoted rate, unless the cession or movement to a new company or tier is based upon misinformation provided by the insured **[.]** ;

(5) Any return premium from this cancellation request pursuant to **[(3)] (4)** above shall be calculated pro rata and returned within 30 days pursuant to RSA 402:81;

(6) With respect to a replacement policy as defined in Ins **[1401.01 (aa)] 1404.02 (w)**, the cession shall be effective as of the effective date of the replacement policy provided the notice of cession is received by the facility within 20 days of the replacement policy effective date, otherwise the cession shall be effective on the date the notice of cession is received by the facility;

(7) On the renewal date of an expiring policy provided written notice is received by the facility before the effective date of the renewal policy, otherwise the cession shall be effective on the date written notice is received by the facility;

(8) With respect to a policy ceded at other times, on receipt by the facility of the required notice, but such acceptance shall not be retroactive; and

(9) No renewal policy shall be ceded to the facility unless a 45-day written notice of such action is delivered to the policyholder.

[(d)] (c) The facility charge for members on ceded policies shall be the facility gross premium less 15 percent facility gross premium and less commission allowance for the cedable limits regardless of the date of cession, except that a pro rata credit against the charge shall be allowed in the event of cancellation of the policy.

[(e)] (d) Policies ceded shall remain in the facility until the expiration date or cancellation date of the policy.

[(f)] (e) A motor vehicle report shall be ordered on all licensed members of the household on all policies ceded to the facility as new business and at least every 3 years thereafter on renewal business for the purpose of determining [chargeable] SDIP points.

[(g)] (f) No policy shall be ceded to the facility solely because of age, place or area or residence, race, color, creed, national origin, marital status or lawful occupation. In addition, no policy shall be ceded to the facility unless such policy has at least one SDIP point.

**[(h) No cession of a new policy or movement of a new policy from one company to another within a group of affiliated companies or the movement of a new policy to a different tier within one company resulting in a higher rate for the insured or the replacement of a new policy by cession to the facility shall be initiated after the 60th day following the effective date of the new policy and shall not be effective unless 15 days written notice is mailed to the insured. Such notice shall include the terms and premiums for coverage.]**

[(i)] (g) Each member shall have the following limitations on its cessions to the facility:

- (1) Each member shall cede no more than 10 percent of its business;
- (2) Each member shall pay to the facility 2 dollars for each dollar of premium over the limitation that it has ceded to the facility;
- (3) Each member's cessions shall be calculated based on a fiscal year of January 1 to December 31; and
- (4) The cession date shall be determined by the effective date of the policy ceded.

Ins 1404.11 Facility Charges, Premium, and Allowance .

(a) Each member ceding a policy of automobile insurance covering a private passenger automobile risk to the facility shall give notice of cession to the facility for that risk. The facility shall debit the member's account in the amount of the member

premiums ceded. Premium ceded shall be 85 percent of the facility gross premium less commission allowance.

(b) Each member ceding risks shall, with respect to losses incurred in connection therewith, subject to the limits of coverage provided in this plan of operation, receive a credit against the sum of such debits, and facility gross premiums, on ceded business for losses paid less recoveries received each month.

(c) The facility shall, quarterly or less frequently as determined by the board, issue summaries to all members reflecting each member's cumulative balances on business it ceded to the facility, providing reimbursement for those members with allowable credits in excess of debits and shall submit a statement to those members with debits which are in excess of allowable credits. A member so billed for debits shall remit such excess within the period provided in the plan of operation, subject to interest charges at a legal interest rate per month or fractional part thereof for late payment as provided therein.

(d) A member which in any month reports allowable credits in excess of debits for ceded risks may request reimbursement for such excess. The facility shall reimburse the member for such excess after the board acts upon such request. The board shall act on an insurers request for reimbursement pursuant to this section.

(e) The maximum commission allowance which may be credited against the premium ceded to the facility shall be 10 percent of the facility gross premium for those companies paying an actual commission. For all other companies, the maximum commission allowance which may be credited against the premium ceded to the facility shall be 5 percent of the facility gross premium. The charges in lieu of paid commissions shall be allowable only to the extent that such have been filed with the insurance department.

(f) **[Facility]** SDIP point surcharges shall be applied to the gross base premium as follows:

(1) Each member shall cede to the facility 85 percent of the surcharge amounts less commission allowance according to the **[facility]** SDIP points chargeable in accordance with the provisions of Ins 1404.13 below to the ceded policy in accordance with the following schedule:

- |   |        |
|---|--------|
| a. For a policy subject to 1 <b>[facility]</b> SDIP point | \$ 90; |
| b. For a policy subject to 2 <b>[facility]</b> SDIP point | 200;   |
| c. For a policy subject to 3 <b>[facility]</b> SDIP point | 330;   |
| d. For a policy subject to 4 <b>[facility]</b> SDIP point | 480;   |
| e. For a policy subject to 5 <b>[facility]</b> SDIP point | 650;   |
| f. For a policy subject to 6 <b>[facility]</b> SDIP point | 840;   |
| g. For a policy subject to 7 <b>[facility]</b> SDIP point | 1,040; |
| h. For a policy subject to 8 <b>[facility]</b> SDIP point | 1,240; |

and

- |                              |          |
|------------------------------|----------|
| i. For each additional point | 200; and |
|------------------------------|----------|

(2) The surcharge commission shall be \$5 for each point to a maximum of \$25 per policy or the actual commission allowance, whichever is less.

(g) The premium amount to be ceded shall be 85% of gross base premium other than SDIP surcharges less 10% if commissions are paid or less 5% if commissions are not paid plus 85% of the SDIP surcharge less the SDIP commission allowance or the actual SDIP commission, whichever is less.

Ins 1404.12 **[Facility]Safe Driver Incentive Plan and SDIP Points.**

**[(a) The facility SDIP is applicable to all ceded policies and supercedes any filed and approved safe driver incentive plan for any member.**

**(b) Policies ceded to the facility shall not be eligible for safe driver discounts.**

**Ins 1404.13 SDIP Points.**

(a) SDIP points for motor vehicle convictions shall be assigned per licensed operator in accordance with motor vehicle during the experience period and shall be as follows:

- (1) Convictions shall be assigned 4 points for the following offenses:
  - a. Homicide or assault arising out of the operation of a motor vehicle;
  - b. Failure to stop and report when involved in an accident; or
  - c. Driving a motor vehicle while under the influence of intoxicating liquor or narcotic drugs.
- (2) Convictions shall be assigned 3 points for the following offenses:
  - a. Driving a motor vehicle in a careless or reckless manner;
  - b. Driving while a license is suspended or revoked;
  - c. Operating a motor vehicle without the owner's permission or consent;
  - d. Highway racing; or
  - e. Driving to endanger.
- (3) Convictions for improper passing of a school bus shall be assigned 2 points.

(b) Conviction of any moving traffic violation other than those listed above shall result in the assignment of one point after the second conviction of such moving traffic violation and one point for each additional conviction.

(c) Convictions for the following shall be subject to assignment of one point but only upon the second conviction for the same offense within the 2 years immediately preceding the effective date of the policy period:

(1) Any violation of motor vehicle equipment requirements **[of the motor vehicle or traffic laws] under RSA 266;**

(2) Failure to display current license plates or registration stickers or diesel fuel permits;

(3) Failure to have a valid operator's license or registration certificate;  
and

(4) Non-inspection of a motor vehicle.

(d) SDIP points for chargeable accidents shall be assigned for chargeable accidents that occurred during the experience period, involving the applicant or any other operator of the vehicle, currently a resident of the same household as follows:

(1) For accidents which occur prior to July 1, 2000 the following shall apply:

a. For each automobile accident resulting in the following one point shall be assigned:

1. Excess of \$500 in bodily injury, but less than \$5,000 in bodily injury; or

2. In excess of \$1,000 damage but less than \$10,000 in damage to any property including his own; and

b. For each automobile accident resulting in the following 2 points shall be assigned:

1. Death of any person;

2. \$5,000 or more bodily injury to any person, or

3. \$10,000 or more in damage to any property including his own;

(2) For accidents which occur after July 1, 2000 the following shall apply:

a. For each automobile accident resulting in the following one point shall be assigned:

1. Excess of \$750 in bodily injury, but less than \$7,500 in bodily injury; or

2. In excess of \$1,500 damage but less than \$15,000 in damage to any property including his own;

- b. For each automobile accident resulting in the following 2 points shall be assigned:

1. Death of any person;

2. \$7,500 or more bodily injury to any person; or

3. \$15,000 or more in damage to any property including one's own; and

- c. For each SDIP chargeable automobile accident in excess of 2 chargeable\_accidents occurring within the experience period 3 points shall be assigned.

(3) No point(s) shall be assigned for an accident if the insured demonstrates that the accident occurred under the following circumstances:

- a. The automobile was lawfully parked; **an automobile rolling from a parked position shall be considered unlawfully parked under the operation of the last operator;**

- b. The applicant or other operator residing in the same household, or owner, was reimbursed by, or on behalf of, a person responsible for the accident, or has a judgment against such person;

- c. The automobile of an applicant or other operator resident in the same household, was struck in rear by another vehicle, and the applicant or other resident, operator has not been convicted of a moving traffic violation in connection with the accident;

- d. The operator of the other automobile involved in such accident was convicted of a moving traffic violation and the applicant or other resident in the same household was not convicted of a moving traffic violation in connection therewith;

- e. The automobile operated by applicant or other operator resident in the same household is damaged as a result of contact with a "hit and run" driver, and the applicant or other operator so reports the accident to the proper authority within 24 hours;

- f. Accidents involving damage by contact with animals;

- g. Accidents involving physical damage, limited to and caused by flying gravel, missiles, or falling objects;

h. Accidents occurring as a result of the operation of an automobile in response to an emergency if the operator at the time of the accident was responding to a call to duty as a paid or volunteer member of any police or fire department, first aid squad or of any law enforcement agency, but not an accident occurring after the emergency situation ceases or after the private passenger automobile ceases to be used in response to such emergency; or

i. An automobile accident involving only injury or property damage to the applicant or any other operator of the automobile currently a resident in the same household, unless the said applicant or operator is convicted of a moving traffic violation in connection with the occurrence;

(4) If the principal operator of the automobile has no surcharge for an accident, but has been licensed less than 2 years, one point shall be assigned;

(5) Conviction points shall be assigned in addition to any points for accidents.

(6) If points are applicable under more than one provision of this subparagraph, points shall be based on the provision which develops the greatest amount of points;

(7) Accident surcharge points shall only be based on paid losses **or incurred losses as filed with the department**; and

(8) Accident points shall be assigned in addition to any points assigned for convictions.

(e) Changes requiring adjustments of premium shall be computed pro-rata.

(f) Changes which occur during the term of the policy shall be calculated using the rates on the inception date of the policy period. **Insurances companies shall not make premium changes to an automobile policy during the policy period in the reinsurance facility other than for the following reasons:**

**(1) Addition of a new or replacement vehicle;**

**(2) Addition or deletion of a driver;**

**(3) Change in garaged location;**

**(4) Change in coverage;**

**(5) Change in limits;**

**(6) Change in use of vehicle;**

(7) The insured has attained a new age;

(8) Charges as a result of convictions occurring or accidents resulting in losses incurred or paid during the current or first prior policy period; however, charges may not reflect a recoupment of uncollected premium from the prior policy period;

(9) The addition of new coverage to a vehicle on the policy or for a replacement vehicle; or

(10) Deletion of a vehicle.

(g) Policies ceded to the facility shall not be eligible for safe driver discounts.

Ins 1404. **[14] 13** Assessments and Participation.

(a) Facility earned premiums, incurred losses, income and expenses shall be determined on the basis of generally accepted insurance accounting principles. The plan of operation shall provide that all investment income earned on business reinsured by the facility shall enter into the determination of the facility's net operating results. The facility shall provide periodic settlement to the members based on the facility's net operating results. The members shall retain for their individual credit all investment income earned prior to the time facility gross premium is forwarded to the facility.

(b) Assessments to pay for facility losses and expenses shall be levied, and any profits shall be distributed, pursuant to the plan of operation.

(c) Such assessments or distributions shall be allocated among the members based on New Hampshire written or earned premium in accordance with the following:

(1) Assessments for private passenger automobile insurance, other than physical damage shall be shared amongst the members as follows:

a. The ratio of a member's total private passenger automobile net direct written car years to the total of such car years of all members shall be used for allocation of 20% of the facility's profits or losses to the individual members; and

b. The ratio of a member's ceded private passenger automobile insurance car year to the total of all such ceded car years shall be used for the allocation of 80% of all facility's profits or losses to the individual members;

(2) Assessments for private passenger automobile physical damage insurance shall be shared amongst the members as follows:



a. The ratio of a member's total private passenger automobile physical damage net direct written car years to the total of such car years of all members shall be used for the allocation of 20% of the facility's profits or losses to the individual members; and

b. The ratio of a member's ceded private passenger automobile physical damage years to the total of all such ceded car years shall be used for the allocation of 80% of all facility's profits or losses to the individual members; and

(3) Assessments of facility net operation expense shall be shared amongst the members as follows:

a. The ratio of a member's total private passenger automobile net direct written car years for the most recent available calendar year to the total of such car years of all members shall be used for the allocation of 20% of all assets, liabilities, income and expenses not properly chargeable to the profit or loss of ceded risks; and

b. The ratio of a member's ceded car years for the most recent available calendar year to the total of all such ceded car years shall be used for the allocation of 80% of all assets, liabilities, income and expenses not properly chargeable to the profit or loss of ceded risks.

(c) For purposes of determining participation ratios, private passenger liability net direct written car years and all other motor vehicle insurance premiums ceded to the facility by a member as designated agent business shall not be included.

**[Ins 1404.15 Special Rules for Designated Private Passenger Automobile Insurance.]**

**(a) The following special rules shall apply to designated private passenger automobile business and shall supersede all other rules only insofar as there is a conflict:**

**(1) The designated carriers shall cede to the facility all business written by designated agents.**

**(2) Such cessions shall not enter into the utilization calculations of the designated carrier;**

**(3) All assessments of facility profits and losses for business written pursuant to Ins 1401.01 (k) and (l) shall be made pursuant to Ins 1404.14; and**

**(4) The portion of designated carrier business which is written through designated agents shall not be made subject to the utilization provisions in Ins 1404.14.]**

Ins. 1404. **[16] 14** Audits.

(a) Facility business written by members shall be subject to review and audit in a manner and time prescribed by the board, and each member to this plan specifically authorizes the board or its designee to audit that part of the member's business which is ceded to the facility or which is relevant to the operation of **[this plan] the facility.**

**[(b) Each member shall adjust losses for ceded business fairly and efficiently in the same manner as voluntary business losses and to effect settlement where settlement is appropriate.]**

[(c)] **(b)** The facility shall be subject to examination at the facility's expense by the commissioner.

Ins 1404. **[17] 15** Indemnification.

(a) Any person or member made or threatened to be made a party to any action, suit or proceeding, because such person or member served on the board or on a committee of the facility or was an officer or employee of the facility, shall be indemnified by the facility.

(b) The indemnification shall consist of all judgments, fines, amounts paid in settlement, reasonable costs and expenses including attorney's fees and any other liabilities that may be incurred as a result of such action, suit or proceeding, or threatened action, suit or proceeding.

(c) A member or person shall not be indemnified by the facility in relation to matters to which the person or member is adjudged in such action, suit or proceeding, to be liable by reason of breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance or reckless disregard of the responsibilities in performance of the member's or person's duties or obligations to the facility and, with respect to any criminal actions or proceedings.

(d) If a person or member had reasonable cause to believe that their conduct was lawful, such indemnification shall be provided whether or not such person or member is a member or is holding office or is employed at the time of such action, suit or proceeding.

(e) Indemnification shall not be exclusive of other rights such person or member may have and shall extend to the successors, heirs, executors or administrators of such person or member.

(f) In the event of settlement or other termination of a matter before final adjudication indemnification shall be provided only if the board is advised by independent counsel that the person or member to be indemnified did not in counsel's opinion commit such a breach of duty.

(g) In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth above shall be determined by the board which shall also determine the time and manner of payment of such indemnification.

(h) However, a person or member who or which has been wholly successful, on the merits or otherwise, in the defense of a civil or criminal action, suit or proceeding of the character described above shall be entitled to indemnification as authorized in this section.

(i) Nothing herein shall be deemed to bind a person or member who or which the board has determined not be entitled to indemnification, or to preclude such person or member from asserting the right to such indemnification by legal proceedings.

(j) Indemnification as is herein provided shall be apportioned among all members, including any named in any such action, suit or proceeding, pursuant to this plan.

Ins 1404. **[18] 16** Hearings and Review.

(a) Any person aggrieved with respect to the operation of the facility may petition the board for review on any alleged failure to comply with the plan or any alleged improper act or ruling in the administration of the facility pursuant to Ins 1404.07 **[(h) (1)] (i)**. The request for review shall be made within 30 days after the date of the alleged violation or improper act or ruling. The review shall be held within 30 days after the receipt of the request. The review shall be held by a panel appointed by the chairman consisting of 3 board members entitled to vote. The decision of a majority of the panel shall be deemed to be the decision of the board unless the full board on its own motion shall modify or rescind the panel's action.

(b) Any board decision may be appealed to the commissioner by filing notice of appeal with the facility and commissioner within 30 days after the date of the decision's issuance. The commissioner shall conduct a hearing under RSA 400-A:17 and issue an order approving or disapproving the action or decision, or directing the board to reconsider the decision.

(c) Any aggrieved member may request a public hearing and ruling by the commissioner on the provisions of the plan. The request for a hearing shall specify the matters to be considered. The hearing shall be held within 30 days after receipt of the request. The commissioner shall give public notice of the hearing and the matters to be considered not less than 10 days in advance of the hearing date.

(d) In the case of any review held by the board pursuant to this section, the board shall issue a decision within 30 days after the review. In the case of any hearing held by the commissioner pursuant to this section the commissioner shall issue a ruling or order within 90 days after the close of the hearing.

(e) Orders of the commissioner on hearings under this plan **of operation** shall be subject to judicial review as provided in RSA 400-A:24.

Ins 1404. **[19] 17** Amendments.

(a) The plan of operation for the New Hampshire automobile reinsurance facility shall be amended by the commissioner at any time pursuant to the provisions of RSA 541-A.

(b) Amendments to the **[day-to-day business]** plan of operation **[pursuant to Ins 1404.07 (k) (1)]** shall be proposed at any annual **, special or board of governor's** meeting of the facility **[or at any special meeting called for that purpose]** and recommended **ed [those amendments]** to the commissioner for approval. Not less than 15 days written notice of any such meeting shall be given, or caused to be given by the chairman of the board, in which notice the action proposed to be taken shall be fully set forth. Such amendments proposed by the members shall not become effective unless approved by the commissioner pursuant to the provisions of RSA 404-C:1.

Ins 1404. **[20] 18 Claim Reserves.** Each member shall maintain claim reserving procedures for claims arising out of facility business commensurate with the procedures utilized by the members for claims arising out of non-facility business.

**Ins 1404.19 Reinsurance Facility Rates. The facility rates shall be developed utilizing data generated by the facility and filed for approval pursuant to the provisions of RSA 412:15 and RSA 412:16.**

**Ins 1404.20 Nonrenewal and Cancellation Protection. Insureds ceded to the facility are entitled to the same statutory and regulatory protections governing nonrenewal and cancellation in the voluntary market.**

**PART Ins 1405 RESIDENCY REQUIREMENTS FOR AUTOMOBILE INSURANCE IN THE VOLUNTARY MARKET AND THE NEW HAMPSHIRE REINSURANCE FACILITY**

Ins 1405.01 Statement of Residency Including Applicable Exemptions.

(a) Pursuant to RSA 417-A:3-b, insurers **or their producers** shall provide to applicants, and shall require applicants to sign and date form INS 1 Statement of Residency Including Applicable Exemptions prior to issuing a policy of automobile insurance.

(b) An exemption from the residency requirement shall be permitted if:

(1) The motor vehicle to be insured is garaged exclusively in New Hampshire; or

(2) The applicant is on active duty in the military service of the United States and claims New Hampshire as his legal state of residence; or

(3) The applicant is on active duty in the military service of the United States and currently stationed in New Hampshire and all vehicles to be insured on the policy for which application is made are currently garaged in New Hampshire, and

(4) The applicant(s) acknowledge(s) that he/she/they shall be subject to prosecution, imprisonment of up to one year, a fine of \$2,000 and the denial of coverage for any loss, not occurring in New Hampshire, under the

policy for which application is made, should the applicant(s) falsely claim the residency exemption for himself/herself/themselves or any named insured, or fail to notify the insurer at policy renewal should any named insured cease to be eligible for a New Hampshire residency exemption.

(c) Applicant(s) shall supply on Form INS 1 the following information:

(1) If the applicant(s) are filing for residency status:

- a. The street address;
- b. The applicant(s)' attestations of residency for all named insureds to be insured on the policy for which application is made.
- c. The applicant(s)' statement of obligation to inform his/her/their insurance company prior to the next renewal of the policy for which application is made should any named insured cease to be a New Hampshire resident, and
- d. The applicant(s)' acknowledgement that he/she/they shall be subject to prosecution, imprisonment of up to one year, a fine of \$2,000 and the denial of coverage for any loss, not occurring in New Hampshire, under the policy for which application is made, should the applicant(s) falsely claim residency for himself/herself/themselves or any named insured, or fail to notify the insurer at policy renewal should any named insured cease to be a New Hampshire resident.

(2) If the applicant(s) are filing for an exemption, the applicable exemption.

(d) The information contained in Form INS 1 shall be relied upon in connection with future renewals of the automobile insurance policy for which the applicant(s) is applying.

(e) It shall be the responsibility of the applicant(s) to inform their insurance company if the information contained in Form INS 1 ceases to be correct.

Ins 1405 Appendix 1

#### Form INS 1 Statement of Residency Including Applicable Exemptions

##### I. New Hampshire Residency Status

(a) To procure automobile insurance, I hereby attest that I am, and each named insured is, a resident of the State of New Hampshire as defined in (c) below. I understand that if I falsely claim for myself or any named insured to be a resident of the State of New Hampshire, I am subject to prosecution, imprisonment of up to one year, a fine of \$2,000 and the denial of coverage for any loss, not occurring in New Hampshire, under the automobile insurance policy for which I am applying.

(b) I also understand that this statement will be relied upon in connection with future renewals of the automobile insurance policy for which I am applying, and that it is my responsibility to inform my insurance company before my next renewal after I or any named insured ceases to be a New Hampshire resident and that I will be subject to the penalties listed in (a) above if I fail to do so.

(c) A resident is a person who maintains his or her true, fixed and permanent residence within the State of New Hampshire, does not claim a residence in any other state for any purpose and who has, through all of his or her actions, demonstrated a current intent to designate that the permanent residence is his or her principal place of physical presence for the indefinite future to the exclusion of all others; or

(d) A resident is a person who has previously met the conditions of (c) above and who now maintains a permanent residence in New Hampshire for the entire year and has actually spent more than 183 days in New Hampshire during the previous calendar year.

(e) The permanent residence referred to in (c) or (d) above is located at (street address) in (city/town) (state).

(f) I/we, the applicant(s), has/have read the above and understand the penalties that may apply if I/we falsely claim to be a New Hampshire resident.

Date:

Signature(s)

## II. New Hampshire Residency Exemption Status

(a) I hereby claim exemption from the residency requirement because (check one):

(1) The motor vehicle to be insured is garaged exclusively in New Hampshire; or

(2) I am on active duty in the military service of the United States and claim New Hampshire as my legal state of residence; or

(3) I am on active duty in the military service of the United States, am currently stationed in New Hampshire and all vehicles to be insured on this policy are currently garaged in New Hampshire.

(b) I understand that this document will be relied upon in connection with future renewals of the automobile insurance policy for which I am applying, and that it is my responsibility to inform my insurance company before my next policy renewal after I cease to be eligible for the New Hampshire residency exemption and that I will be subject to the penalties listed in I.(a) above if I fail to do so.

(c) I/we, the applicants, has/have read the above and understand the penalties that may apply if I/we falsely claim to be eligible for the New Hampshire residency exemption.

Date:

Signature(s)

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